1	BEFORE THE POLL	UTION CONTROL HEARINGS BOARD
2	STA	TE OF WASHINGTON
3	TRI-STAR MARINE, INC., Appellant,	PCHB NO. 91-249
5 6	▼.	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW
7	STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,	AND ORDER
9	Respondent.	
10	This matter was heard on Sep	tember 30, 1992, in Lacey, Washington, before the
11	Pollution Control Hearings Board ("F	Board"), Robert V. Jensen, attorney member presiding.
12	Board Chairman Harold S. Zimmerm	an, and Annette S. McGee, Board Member were presen
13	to conduct the hearing.	
14	Appellant, Tri-Star Marine, Ir	nc., ("Tri-Star") appeared pro se through its Executive
15	Vice-President, Ralph Hansen. The	Department of Ecology ("Ecology") respondent, was
16	represented by Assistant Attorney Ge	neral, Ronald L. Lavigne. Court Reporters affiliated
17	with Gene S. Barker and Associates of	of Olympia, recorded the proceedings.
18	Annette S. McGee was absent	during a portion of the proceeding, but has heard the
19	audio tape of that portion of the proce	eeding, and has reviewed the videotape (Ex. R-12) and
20	Ex. A-1, which exhibits were admitted	ed in her absence.
21	The Board heard the testimony	y of sworn witnesses, reviewed all the exhibits that were
22	admitted and listened to opening state	ements and closing arguments of the parties. Based
23	thereon, the Board makes these:	
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26	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDE	יסי
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FINDINGS OF FACT

Ι

Tri-Star is a shippard located along the Lake Washington Ship Canal. This canal links Lake Washington and Lake Union with Puget Sound, through the Ballard Locks. Its facilities include a drydock and a pier on one side, and wharf on the other. There are eight shippards located on Lake Union and the canal. The closest shippard to Tri-Star is approximately two blocks up the canal.

П

Tri-Star frequently removes paint from boats placed on its drydock. The drydock has three walls and an open end for the boat to enter and exit. The walls of the drydock are hollow and made to contain water. The drydock is submerged by allowing the walls to fill with water. The boat enters the drydock when it is submerged. As the water is pumped out of the walls, the drydock floats until it and the boat are above water.

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Tri-Star uses a grit containing copper to sandblast the boats in order to remove paint.

This process is utilized to remove various paints from boats or ships, including bottom paints.

These paints generally contain metals designed to prevent organisms from adhering to the hull.

IV

Tri-Star uses approximately 60 tons a month of sandblast grit, during the peak boat repair season. 50 percent of the grit is used on the exterior of the ship; 30 percent in the ship's interior; and 20 percent on the superstructure above the main deck.

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FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER PCHB NO. 91-249

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V

On August 24, 1987, Tri-Star wrote to Ecology, in connection with a National Pollutant Discharge Elimination System ("NPDES") permit application, that it would shovel scrape the drydock clean of grit prior to submersion.

VI

Tri-Star in its NPDES permit application, later stated that

the drydock before emersion [sic], shall be cleaned of all floating materials and sandblast shall be swept away from the aprons to avoid entering the water.

VΠ

On June 20, 1991, an Ecology representative visited Tri-Star in response to a complaint about significant accumulations of sandblast grit on the drydock. The Ecology officials observed up to 2 feet of sandblast grit on the drydock at that time. The Ecology official in charge of reviewing the NPDES permit application warned Mr. Hansen that there was too much sandblast grit to submerge in water.

VΠ

On July 9, 1992, Tri-Star was sandblasting on the drydock. Although there was some tarping, the vessel had not been tarped over, and the corner of one tarp was not sealed off. The residue of the sandblast grit was floating in the air outside and around the drydock sufficiently to obscure visibility. It is probable that this process added sandblast grit residue to the waters of the canal.

IX

Puget Sound Alliance is a public interest group dedicated to educating the public and ensuring proper stewardship of the waters of and in proximity to Puget sound.

Kenneth Moser is the Executive Director of Puget Sound Alliance. He directs the

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER PCHB NO. 91-249

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Puget Sound Keeper Program, which among other things reviews citizen complaints of water pollution. The Keeper Program has recommended to the Board of Directors of the Puget Sound Alliance, the reduction of sources of toxic or hazardous waste to the water of Puget Sound.

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The Puget Sound Keeper operates a 26 foot research vessel that, routinely checks on water quality compliance, including that by the shipyards on Lake Union and the ship canal. The Keeper has a 1-800 telephone number which is widely advertised around Puget Sound. The Keeper has received numerous calls, and two complaints about Tri-Star. Mr. Moser has personally observed that shovel scraping is a common practice at the shipyards in the area.

XI

On the afternoon of August 22, 1991, Mr. Moser was conducting a video tour of the canal for CNN. Slightly after 4 p.m. he saw and CNN filmed the Kara Gail, a fishing boat, in Tri-Star's drydock. An employee was observed shoveling sandblast grit residue under the hull of the boat.

XII

Ecology sent an inspector, Deborah North, who is the Lake Union Action Team Coordinator, to the site on the next day. Ms. North has been measuring background levels of pollution on Lake Union and the ship canal, between 1991 and June, 1992. She has made, since December 1989, approximately 25 inspections each year, 40 to 50% of which involve shipyards. On August 22nd she observed that the drydock was empty, raised and contained substantial quantities of sandblast grit and water. The sandblast grit was accumulated largely in two berms lying parallel to and near the side walls of the drydock.

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2	XIII	
3	Ms. North observed sandblast grit particles were floating on the water adjacent to the	
4	drydock. She took samples of the water just off the drydock and of the grit on the drydock	
5	itself. These samples, which were analyzed at the METRO environmental lab, showed metal	
6	constituents in both the water and grit samples.	
7	The samples revealed the following concentrations of metals in the water samples:	
8	copper 760 parts per billion ("ppb") lead 200 ppb	
9	zinc 520 ppb	
10	aluminum 1100 ppb	
	barium 51 ppb iron 7500 ppb	
11	manganese 110 ppb	
12	titanium 70 ppb	
13	The ambient water quality levels of the following metals, in the ship canal area as	
14	follows:	
15	aluminum 50-70 ppb	
16	barium 4-8 ppb	
,,	1ron 80-100 ppb	
17	manganese 3-10 ppb	
18	titanium no level previously has been detected in these waters.	
10	XIV	
19	Some of the sandblast grit, when it enters the water, remains suspended and dissolved,	
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21	the heavier particles fall to the bed and remain in the sediments.	
22	XV	
23	On one occasion, Tri-Star attempted to vacuum the sandblast grit residue. However, it	
24	subsequently abandoned this procedure. Since then, Tri-Star has not consistently removed the	
25	grit from the drydock prior to submersion. Tri-Star has not cleaned the drydock of sandblast	
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	FINAL FINDINGS OF FACT,	
27	CONCLUSIONS OF LAW & ORDER PCHB NO. 91-249 (5)	

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2	grit left from certain boats, prior to submersion, because of the shape of the hull and keel of
3	those boats. Since August 23, 1991, Tri-Star has cleaned the drydock of sandblast grit, prior
4	to its submersion.
5	XVI
	Ecology issued a civil penalty to Tri-Star on October 8, 1991, in the amount of \$8,000.
6	Tri-Star applied for relief from the penalty, but the request was denied.
7	XVII
8	Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.
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10	From these Findings of Fact, the Board issues these:
11	CONCLUSIONS OF LAW
12	Ï
13	RCW 90.48.010 provides in pertinent part, as follows:
14	It is declared to be the public policy of the State of Washington to
İ	maintain the highest possible standards to insure the purity of all waters
15	of the state consistent with public enjoyment thereof, the propagation and protection of wildlife, birds, game, fish and other aquatic life, and
16	the industrial development of the state, and to that end require the use of
17	all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of
18	Washington. Consistent with this policy, the state of Washington will
19	exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state.
20	II
21	RCW 90.48.080 mandates that:
22	NCW 70.40.000 manages that.
23	It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or
	suffer to be thrown, run, drained, allowed to seep or otherwise
24	discharged into such waters any organic or inorganic matter that shall
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26	FINAL FINDINGS OF FACT,
27	CONCLUSIONS OF LAW & ORDER

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cause or tend to cause pollution of such waters according to the determination of the department as provided for in this chapter.

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RCW 90.48.020 broadly defines pollution as follows:

Whenever the word "pollution" is used in this chapter, it shall be construed to mean such determination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, color, turbidity, or odor of the waters, or such discharges of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as well as is likely to create a nuisance or render such waters harmfully detrimental or injurious to the public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

IV

RCW 90.48.520, in pertinent part, further directs that:

In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria.

v

RCW 90.48.144 authorizes Ecology to assess civil penalties of up to ten thousand dollars a day for each violation. Each violation is considered a separate offense. In the case of a continuing violation, every day's continuance shall be deemed a distinct violation. The amount of the penalty set is done in consideration of the previous history of the violator and the severity of that violation's impact on public health or the environment, as well as other relevant factors.

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FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER PCHB NO. 91-249

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2	The water quality standards for toxic substances are found in WAC 173-201-047. The
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4	freshwater acute standards, for the following metals are:
5	copper 11 ppb lead 43 ppb
6	zinc 95 ppb
7	VII
8	When the ambient water quality is either higher or lower than the water quality criteria
9	the ambient levels constitute the water quality criterion. WAC 173-201-035(8)(c) and (d).
10	This is pursuant to the anti degradation policy of the State of Washington.
11	WAC 173-201-035(8). It follows, that where there is no specific water quality criterion for a
12	particular metal, the ambient levels of the water body constitute the water quality criteria for
13	that metal.
14	VIII
15	Tri-Star on several occasions, by allowing sandblast grit to enter the waters of the canal
16	in substantial quantities has violated the water quality criteria for the ship canal for copper,
17	lead, zinc, aluminum, barium, iron, manganese and titanium. Ecology has determined that the
18	addition of the quantities of metals introduced by Tri-Star into the ship canal constitutes
19	pollution of these waters, pursuant to RCW 90.48.080.
20	IX
21	Tri-Star admits that it is capable of shovel-scraping clean its drydock of sandblast grit
22	prior to submersion. By not doing so, it has failed to use all known, available and reasonable
23	methods of treatment.
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27	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER
41	PCHB NO. 91-249 (8)

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2	X
3	The \$8,000 civil penalty is reasonable in light of the circumstances, particularly the
4	history of Tri-Star's operations.
5	XI
6	Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.
7	From the foregoing, the Board issues this:
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2	ORDER
3	The civil penalty of \$8,000 occurred by Ecology against Tri-Star, and Ecology's denial
4	of Tri-Star's application for relief of penalty are affirmed.
5	DONE this <u>131</u> day of October, 1992.
6	POLLUTION CONTROL HEARINGS BOARD
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8	DODEDT V. Jeusen
9	ROBERT V. JENSEN, Presiding Member
10	HAROLD & TRACERIAN Charman
11	HAROLD S. ZIMMERMAN, Chairman
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13	ANNETTE S. MCGEE, Member
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